

DOCUMENT RESUME

02662 - [A1652652]

[Agency's Decision with regard to Actual Needs for Procurement].
B-187986. June 7, 1977. 3 pp.

Decision re: Emerson Electric Co.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services: Notifying
the Congress of Status of Important Procurement Programs
(1905).

Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: General Services Administration.

Authority: B-187216 (1976).

Protester challenged the decisions of the General
Services Administration (GSA) to delete a "bid equalization
factor for space" and to include an "unreasonable schedule for
preaward benchmark testing" under the first step of a two-step
advertised procurement. JAO will defer to an agency's decision
as to the actual needs for procurement unless the decision is
not rationally founded. The position was found to be rationally
founded. (Author/SC)

2652

02662

J. ...
Proc 1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-167986

DATE: June 7, 1977

MATTER OF: Emerson Electric Company

DIGEST:

1. It has long been position of GAO to defer to agency's decision as to actual needs for procurement--recognizing broad discretion inherent in making decision--unless decision is not rationally founded.
2. Based on review of GSA's position for eliminating space utilization factor from solicitation, GAO concludes that position is rationally founded.

Emerson Electric Company has challenged the decisions of the General Services Administration (GSA) to delete a "bid equalization factor for space" and to include an "unreasonable schedule for preaward bench mark testing" under the first step of a two-step advertised procurement for "power system" (UPS) equipment.

The initial solicitation for step one proposals provided that "the bidder who provides compact packaging [of the equipment] with less floor space requirements will be looked upon in a favorable manner with regard to a bid equalization factor." Paragraph 10.3 of the solicitation went on, Emerson says, to describe how bid prices would be adjusted for space utilization to arrive at an "Evaluated Base Bid." Because the "space utilization factor" applied to only part of the equipment, Emerson urged that GSA amend the solicitation to apply the factor to all equipment. Contrary to Emerson's expectations, GSA decided to eliminate the entire factor.

Emerson suggests that the deletion of the factor runs contrary to the expressed intent of the solicitation (as first issued) that the factor was important as well as contrary to past practice on an earlier similar procurement made directly by the Social Security Administration (SSA)--the user of the equipment under the subject solicitation.

GSA explains why it deleted the factor, as follows:

E-187986

"* * * the solicitation drafted and issued on this particular procurement had drawn heavily from the specifications prepared by the Social Security Administration for its own, independent procurement of UPS equipment. SSA had had a critical space problem that had to be met by the UPS equipment it procured. SSA had, therefore, included in its procurement a space efficiency bid equalization factor. That factor was, without adequate analysis and consideration, picked up and incorporated into the instant solicitation.

"After GSA put its solicitation on the market, Emerson contacted GSA requesting that the space efficiency bid equalization factor be expanded to reflect battery space efficiency. Conversely, Exide expressed objection to imposition of a 'penalty' factor upon those offering larger modules. The Project Manager thereupon reviewed the plans and specifications for both the UPS procurement and for the structure and found that the structural design has been developed in such manner that 40,430 square feet of space would be provided for the UPS equipment. Miniaturization of UPS equipment would have no real cost benefits to the Government of such significance as to justify imposing a space efficiency bid equalization factor. The space saved could be used for nothing but storage, and there is no known requirement for additional storage space within the structure as now designed. Accordingly, Amendment No. 4 was issued to eliminate the unnecessary space efficiency bid equalization factor."

Emerson has not contested this analysis other than insisting that GSA's present position is inconsistent with SSA's past procurement practice and that, perhaps, even a further review of bid evaluation factors is in order.

As to Emerson's argument that the solicitation provided for an "unreasonable schedule for pre-award bench mark testing," we have recently been informed that the mid-February testing date has been postponed to the end of June 1977. Since the amount of time granted to prepare for benchmark testing has been extended an additional 120 calendar days (approximately), Emerson has been given, in effect, the additional time for testing the company sought. Therefore, this issue is academic and need not be considered.

B-187986

The other ground of protest contests an agency's definition of its actual needs for a given requirement. It has long been our position, however, to defer to an agency's decision as to its actual needs--recognizing the broad discretion possessed by procuring activities in drafting specifications reflective of their needs--unless the decision is not rationally founded. See, for example, Tele-Dynamics Division of Ambac Industries, Inc., B-187216, December 17, 1976, 76-2 CPD 503, and cases cited in text.

Based on our review, we find that GSA's position on the space utilization factor is rationally supported. Since the additional space that might be saved by using "miniaturized" equipment could only be used for additional storage space which is not needed, it is sensible not to place a space efficiency factor in the subject solicitation--notwithstanding the fact that SSA felt an efficiency factor would be appropriate on an earlier procurement and notwithstanding the initial erroneous inclusion of the factor in the present procurement.

Protest denied.

R. Ketter
Deputy Comptroller General
of the United States